



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-0101]

RIN 1625-AA87

Security Zones; Cruise Ships, San Pedro Bay, California

AGENCY: Coast Guard, DHS.

ACTION: Final Rule

SUMMARY: The Coast Guard is amending a security zone regulation for cruise ships visiting San Pedro Bay, California by providing a common description of all security zones to encompass only navigable waters within a 100-yard radius around any cruise ship that is located within the San Pedro Bay port area landward of the sea buoys bounding the Port of Los Angeles or Port of Long Beach or at designated anchorages within 3 nautical miles of the Federal breakwater. This rule is necessary to provide for the safety of the cruise ship, vessels, and users of the waterway. Entry into these security zones will be prohibited unless specifically authorized by the Captain of the Port (COTP) Los Angeles - Long Beach, or his designated representative.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The contents of the online docket for this rulemaking, USCG-2011-0101, may be viewed by going to <http://www.regulations.gov>, inserting USCG- 2011-0101 in the "Keyword box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER CONTACT: If you have questions on this rule, call or e-mail Ensign Stephen M. Sanders, Assistant Chief, Waterways Management, Coast Guard Sector Los Angeles - Long Beach, Coast Guard; telephone 310-521-3860, e-mail Stephen.M.Sanders@uscg.mil If you have any questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

Regulatory Information

On August 16, 2011, we published a noticed of proposed rulemaking (NPRM) entitled Security Zones; Cruise Ships, San Pedro Bay, CA in the Federal Register (76 FR 50710). We received no comments on the proposed rule, either

through the electronic docket office, or directly to Coast Guard Sector Los Angeles - Long Beach. A public meeting was not requested, and none were held.

Basis and Purpose

Based on experience with actual security zone enforcement operations, the COTP Los Angeles - Long Beach has concluded that a security zone is needed encompassing all navigable waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is within the San Pedro Bay port area inside the sea buoys bounding the Port of Los Angeles or Port of Long Beach or at designated anchorages within 3 nautical miles of the Federal breakwater. This will provide for the safety of the cruise ship, vessels, and users of the waterway.

Background

The Coast Guard is amending an existing security zone regulation. The security zones created by this rule will encompass only navigable waters within a 100-yard radius around any cruise ship that is located within the San Pedro Bay port area landward of the sea buoys bounding the Port of Los Angeles or Port of Long Beach or at designated anchorages within 3 nautical miles of the Federal breakwater. These security zones are necessary to provide

for the safety of the cruise ship, vessels, and users of the waterway. Entry into these security zones is prohibited unless specifically authorized by the Captain of the Port (COTP) Los Angeles - Long Beach, or his designated representative.

Paragraph (b)(1) and (b)(2) of the existing 33 CFR 165.1154 includes reference to the shore area and cruise ships anchored at designated anchorages either inside or outside at designated anchorages within 3 nautical miles of the Federal breakwaters. The COTP has determined that security zones for moored cruise ships in Los Angeles - Long Beach Harbors need not include any shore area, as passenger terminals used for cruise ship operations are regulated under regulations in 33 CFR part 105 issued under authority of the Maritime Transportation Security Act of 2002 (Pub. L. 107-295). In addition to clarifying the area covered by security zones created by § 165.1154(b), this rule simplifies the regulation by not distinguishing between anchored cruise ships, moored cruise ships, and cruise ships underway. Also, § 165.1154 paragraph (c) is amended to make it clear that persons and vessels may not enter these security zones without first obtaining permission of the Captain of the Port.

Discussion of Comments and Changes

There were no comments submitted to the electronic docket or to the Coast Guard Sector Los Angeles - Long Beach. No changes were made from the proposed regulation.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order or under Executive Order 13563, Improving Regulation and Regulatory Review. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that full Regulatory Evaluation is unnecessary. Most of the entities likely to be affected are pleasure craft engaged in recreational activities and sightseeing. In addition, due

to National Security interests, the implementation of this security zone regulation is necessary for the protection of the United States and its people. The size of the zones is the minimum necessary to provide adequate protection for cruise ships.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in Los Angeles - Long Beach ports within a 100-yard radius of cruise ships covered by this rule.

This security zone regulation will not have a significant economic impact on a substantial number of

small entities because vessel traffic can pass safely around the zones.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104- 121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly

Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34) (g), of the Instruction. This rule involves amending a security zone regulation by removing the reference to shore area in security zones for moored cruise ships. An environmental analysis checklist and a categorical exclusion determination are available in the docket were indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 -- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04- 6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. In § 165.1154, revise paragraphs (b) and (c) to read as follows:

§ 165.1154 Security Zones; Moored Cruise Ships, San Pedro Bay, California.

* * * * *

(b) Location. The following areas are security zones: All navigable waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship that is located within the San Pedro Bay area landward of the sea buoys bounding the port of Los Angeles or Port of Long Beach or designated anchorages within 3 nautical miles seaward of the Federal Breakwaters.

(c) Regulations. Under regulations in 33 CFR part 165, subpart D, a person or vessel may not entry into or

remain in the security zones created by this section unless authorized by the Coast Guard Captain of the Port, Los Angeles - Long Beach (COTP) or a COTP designated representative.

(1) Persons desiring to transit these security zones may contact the COTP at telephone number (310) 521-3801 or on VHF-FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(2) When a cruise ship approaches within 100 yards of a vessel that is moored, or anchored, the stationary vessel must stay moored or anchored while it remains within the cruise ship's security zone unless it is either ordered by, or given permission from, the COTP Los Angeles-Long Beach to do otherwise.

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Dated: December 23, 2011

R. R. Laferriere
Captain, U.S. Coast Guard
Captain of the Port Los Angeles - Long Beach

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